

This decision notice has been referred to the Upper Tribunal. The Upper Tribunal has the power to dismiss the reference or remit the matter back to the FCA with directions.

DECISION NOTICE

To: Arif Hussein

Date of Birth: 2 September 1979

Authority Reference Number: AXH01348

Date: 22 January 2016

ACTION

1. For the reasons given in this Decision Notice, the Authority has decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Hussein from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm.

SUMMARY OF REASONS

2. The Authority has decided to take this action because it considers that Mr Hussein is not a fit and proper person to carry out any of the functions referred to in paragraph 1, in that he lacks integrity. In particular, Mr Hussein, who was a derivatives trader at UBS in London, understood that it would be improper for Trader-Submitters to make LIBOR submissions with the aim of benefitting Trading Positions of UBS. However, between 28 January and 19 March 2009 he informed GBP Trader-Submitters of his preferences for GBP LIBOR rates (on the basis of his

Trading Positions). He did so while closing his mind to the risk that GBP Trader-Submitters would use those preferences to influence the GBP LIBOR submissions they made on behalf of UBS, with the aim of benefitting his Trading Positions. In so doing, he acted recklessly.

London Interbank Offered Rate

3. LIBOR is a benchmark reference rate fundamental to the operation of both UK and international financial markets including markets in interest rate derivatives contracts. Its integrity is of fundamental importance to both UK and international financial markets.
4. LIBOR is published daily in a number of currencies and maturities and during the Relevant Period was set according to a definition published by the BBA. It was based on interbank borrowing in the London market and Panel Banks made daily submissions to the BBA to enable LIBOR to be calculated.

Mr Hussein's misconduct in relation to LIBOR submissions

5. Mr Hussein knew that the definition of LIBOR required submissions from Panel Banks based on their cost of borrowing in the interbank market. He understood that LIBOR submissions should not be made for the benefit of Trading Positions. He understood, therefore, that it would be improper for GBP Trader-Submitters to make submissions which took Trading Positions into account. He knew that he was providing information about his preferences for GBP LIBOR rates (for his Trading Positions) to Trader-Submitters or to individuals who were in communication with Trader-Submitters. He closed his mind to the risk that the Trader-Submitters would use those preferences to influence the GBP LIBOR submissions they made on behalf of UBS with the aim of benefitting his Trading Positions. In so doing he acted recklessly and lacked integrity.
6. The UK and international financial system relies on the integrity of benchmark reference rates such as LIBOR. Mr Hussein's misconduct threatened confidence in the integrity of the UK financial system and could have caused significant harm to other market participants.
7. As a result of his lack of integrity, the Authority considers that Mr Hussein is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm and, as such, should be prohibited from doing so.

DEFINITIONS

8. The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"ALM" means the Asset and Liability Management Group at UBS;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the BBA" means the British Bankers' Association;

"EG" means the Authority's Enforcement Guide;

"EUR" means Euro;

"EURIBOR" means the Euro Interbank Offered Rate;

"FIT" means the Authority's Fit and Proper test for Approved Persons;

"GBP" means British Pound Sterling;

"LIBOR" means the London Interbank Offered Rate;

"Panel Bank" means a bank with a place on the BBA panel for contributing LIBOR submissions in one or more currencies;

"Rates Desk" means the desk at UBS that traded derivatives with a maturity of more than one year which was located in London;

"Relevant Period" means the period from 28 January to 19 March 2009;

"STIR" means the UBS Short Term Interest Rate Desk which was located in Zurich;

"Trader-Submitter" means a UBS Trader who also has responsibility for making LIBOR submissions;

"Trading Positions" means trading book positions held in respect of derivative positions;

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"UBS" means UBS AG; and

"USD" means United States Dollar.

FACTS AND MATTERS

LIBOR and interest rate derivatives contracts

9. LIBOR is the most frequently used benchmark for interest rates globally, referenced in transactions with a notional outstanding value of at least USD 500 trillion. During the Relevant Period LIBOR was published for ten currencies and fifteen maturities. GBP LIBOR is very widely used and three month and six month are the most commonly used maturities.
10. Interest rate derivatives contracts typically contain payment terms that refer to benchmark rates. LIBOR is by far the most prevalent benchmark rate used in over-the-counter interest rate derivatives contracts and exchange traded interest rate contracts.
11. During the Relevant Period LIBOR was published on behalf of the BBA. LIBOR (in each relevant currency) was set by reference to the assessment of the interbank market made by a number of Panel Banks. The Panel Banks were selected by the BBA. Each Panel Bank contributed rate submissions each business day.
12. These submissions were not averages of the relevant Panel Banks' transacted rates on a given day. The BBA required contributing banks to exercise their subjective judgement in evaluating the rates at which money may have been available in the interbank market when determining their submissions.

13. During the Relevant Period, the definition of LIBOR published by the BBA and available to participants in the UK and international financial markets was as follows:

“The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size, just prior to 11:00am London time.”

14. During the Relevant Period the GBP LIBOR panel consisted of 16 banks, including UBS, and the rate calculation for each maturity excluded the highest four and lowest four submissions. An average of the remaining eight submissions was taken to produce the final benchmark rate.
15. During the Relevant Period, UBS delegated responsibility for determining and making LIBOR submissions to Trader-Submitters.

UBS Final Notice

16. On 19 December 2012 the Authority published a Final Notice against UBS and imposed on UBS a financial penalty of £160 million. The Final Notice stated that UBS had committed serious misconduct in respect of its LIBOR and EURIBOR submissions process, including by not observing proper standards of market conduct in its submissions, and failing to take reasonable care to organise its affairs responsibly and effectively, with adequate risk management systems in relation to the process.
17. The UBS Final Notice describes in detail UBS’s failings. Amongst other things it states that over a period of six years, UBS routinely sought to manipulate LIBOR in order to improve the profitability of Trading Positions.

Mr Hussein’s role at UBS

18. Mr Hussein commenced employment with UBS in October 2000. Throughout his employment at UBS, Mr Hussein was based in the Rates Division in London. By January 2005, Mr Hussein was a derivatives trader on the EUR Rates desk trading interest rate swaps, forward rate agreements and options denominated in EUR and referenced to benchmarks including EUR LIBOR. From 1 January 2005 to April 2006, Mr Hussein was also a EUR LIBOR Trader-Submitter.
19. In May 2006 Mr Hussein moved to the GBP Rates Desk where he continued to trade interest rate derivative products, including interest rate swaps, forward rate agreements and options now denominated in GBP and referenced to benchmarks including GBP LIBOR.
20. In September 2008 Mr Hussein was promoted to Head of the GBP Rates Desk, a position he held until he resigned from UBS in March 2009.
21. Mr Hussein understood that the BBA definition of LIBOR required LIBOR submissions to be based on the cost of interbank borrowing and that LIBOR submissions should not be made to benefit Trading Positions.

Information given by Mr Hussein to UBS’s GBP LIBOR Trader-Submitters

22. During the Relevant Period, Mr Hussein engaged in 21 communications with GBP Trader-Submitters (in UBS internal chat groups and private internal chats) in

which he informed them of his preferences (or, occasionally, his lack of a preference), on the basis of his Trading Positions, for GBP LIBOR rates.

Description of the communications

23. Mr Hussein's preferences, communicated by him, were for high or low benchmark GBP LIBOR rates, as published by the BBA. For example, in some communications he would tell the Trader-Submitter that he was "paying the fix" on a particular day, indicating (either expressly or impliedly) that he would prefer a low GBP LIBOR rate. This meant that on that day he was due to pay out on the floating leg of an interest rate swap, with the payment referenced to GBP LIBOR and would therefore benefit from a lower GBP LIBOR rate. In other communications he would say he was "receiving the fix", indicating (either expressly or impliedly) that he would prefer a high LIBOR rate.
24. Between 27 April 2007 and 3 March 2008, Mr Hussein engaged in five communications with GBP Trader-Submitters in which, in response to questions from the Trader-Submitters, he informed them of his preference (or his lack of a preference) for GBP LIBOR rates. The Authority has not found that Mr Hussein was acting improperly by reason of his part in these communications.
25. On 20 March 2008 Mr Hussein entered into a further chat with Trader-Submitter F in which he communicated his preference for the three-month GBP LIBOR rate. Mr Hussein told the Authority that, after doing so, he became concerned at the response of Trader-Submitter F ("*so u need a higher fixing...ok we will fix the 3m higher*"). He believed that Trader-Submitter F might have been soliciting him to provide his preference for the purpose of influencing UBS's three-month LIBOR submission for the benefit of his Trading Positions, and might have misunderstood his response as a request to do so. Mr Hussein reported this matter to a more senior staff member. That individual did not appear to consider the chat to be a cause for concern, and Mr Hussein was not aware of any action being taken in respect of it. It is clear from this incident that Mr Hussein appreciated that he was communicating with a Trader-Submitter, or that the information about his preference might be passed on to a Trader-Submitter, and that it would be improper for Trader-Submitters to use LIBOR submissions with the aim of benefitting his Trading Positions.
26. In late January 2009, the senior management of UBS, who were in the process of merging the businesses of the Rates Desk and STIR, requested the traders on those desks to cooperate. On 27 January 2009, Mr Hussein and Trader-Submitter F discussed the mutual benefits in improving communication between them.
27. The day after this exchange, for almost two months, Mr Hussein and Trader-Submitter F engaged in frequent, sometimes daily, private internal chats through which Mr Hussein gave Trader-Submitter F his preferences for GBP LIBOR rates. Trader-Submitter F sometimes called Mr Hussein's preferences his "*special libors*."
28. During this period, at shortly before 11:00 GMT Trader-Submitter F would typically contact Mr Hussein via private internal chat and ask whether he had "*any special libors*" or "*any special wishes for the libor fixings*". Where Mr Hussein had a desire for a "*special libor*" that day, he would say whether he was receiving or paying the fix, in what tenors, and, accordingly, whether he wanted the GBP LIBOR rate to be high or low. On occasion he expressed no preference.
29. Although, typically, Trader-Submitter F would approach Mr Hussein, on occasions these communications were initiated by Mr Hussein. Furthermore, on one occasion during this period, in Trader-Submitter F's absence, Mr Hussein

communicated his preference to a different Trader-Submitter. Examples of this sort of exchange are set out below.

30. On 3 February 2009 at 10:39 (GMT), the following exchange occurred:

Trader-Submitter F: *Arif any special libors today?*

Hussein: *I am rec [receiving] th3m (sic) fix and paying the 6m fix [-] 15k of each*

Trader-Submitter F: *so low 3m and high 6m will do that [-] sorry other way around*

Hussein: *yes pls*

31. On 5 February 2009, in an internal chat, Trader-Submitter F asked, "*Arif any special libor fixings?*" to which Mr Hussein responded "*I am rec [receiving] both the 3m and 6m fix today*". Trader-Submitter F replied "*ok will fix them high*" and Mr Hussein replied "*thx vm*".

32. On 3 March 2009 in an internal chat, Mr Hussein approached Trader-Submitter F saying "*im rec [receiving] the 6m fix in 35k this morning...so a high fix would be good*" to which Trader-Submitter F responded "*ok will do*".

33. On 16 March 2009, Trader-Submitter F asked "*...any special libor fixings today?*" Mr Hussein replied "*ive got a big 6m fix...rec [receiving] 110k gbp of the fix...so a nice high one will be nice*", Trader-Submitter F clarified "*so very high 6m*" to which Mr Hussein responded "*yes pls!*" and Trader-Submitter F confirmed "*ok*".

34. Between 28 January and 19 March 2009, following the agreement between Mr Hussein and Trader-Submitter F to improve communication, Mr Hussein and Trader-Submitter F (or, on one occasion, a different Trader-Submitter) engaged in 21 documented communications concerning Mr Hussein's preferences for GBP LIBOR rates. During this period such communications were routine. They ended only when Mr Hussein resigned from UBS.

35. The Authority considers that, during the Relevant Period, Mr Hussein was closing his mind to the possibility that colleagues within STIR were soliciting Mr Hussein's preferences for GBP LIBOR for the purpose of influencing UBS's GBP LIBOR submissions with the aim of benefitting his Trading Positions, and to the risk that the information he provided (where he expressed a preference) would be so used. In so doing, Mr Hussein acted recklessly.

36. In concluding that Mr Hussein closed his mind to the purpose of the Trader-Submitters' communications after 27 January 2009 regarding his preferences for LIBOR, the Authority has had regard to the wording of the chats, the fact that he had previously escalated his concerns about a similar chat, and statements by Mr Hussein in interview with the Authority regarding these communications, which the Authority summarises as follows:

- i. Some of these chats were such that, at the relevant time, he would have preferred not to be a party to them because they might be questioned in the future.
- ii. However, he had assumed there was no problem with these communications because they were subject to supervision by the bank's Compliance team.

37. UBS's GBP LIBOR Submitters routinely took Mr Hussein's preferences into account in determining their submissions. On many occasions this is clear from the positive responses given by UBS's GBP LIBOR Trader-Submitters, including Trader-Submitter F, to Mr Hussein's preferences.
38. Mr Hussein resigned from UBS on 20 March 2009.
39. The regulatory provisions relevant to this Notice are referred to in Annex A.

FAILINGS

Improper conduct

40. Mr Hussein acted improperly in that during the Relevant Period he:
 - i. understood that the definition of LIBOR required Panel Banks to make submissions based on borrowing in the interbank market and that LIBOR submissions should not be made for the benefit of Trading Positions;
 - ii. understood, therefore, that it would be improper for UBS's GBP LIBOR Submitters to use information about preferences for LIBOR rates when making submissions, with the aim of benefitting Trading Positions; and
 - iii. engaged in communications with GBP LIBOR Trader-Submitters at UBS, in which he provided information as to his preferences, for his Trading Positions, for GBP LIBOR rates, while closing his mind to the fact that this would be used to influence the LIBOR submissions made by UBS with the aim of benefitting his Trading Positions.

Lack of Fitness and Propriety

41. The relevant sections of FIT are set out in Annex A.
42. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
43. During the Relevant Period Mr Hussein understood the definition of LIBOR as published by the BBA and that his preferences, for his Trading Positions, should not be taken into account when making UBS's GBP LIBOR submissions.
44. Mr Hussein's actions were reckless because he provided information about his preferences, while closing his mind to the risk that this information would be used with the aim of benefitting his Trading Positions. The Authority considers that, having acted recklessly, Mr Hussein lacks integrity as a result of his actions as set out in this Notice.
45. Because he lacks integrity, Mr Hussein is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Further, the Authority considers that Mr Hussein's lack of integrity poses a risk to confidence in the UK financial system.

SANCTION

46. The Authority considers that, as Mr Hussein is not a fit and proper person to perform any function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, he should be prohibited from doing so.

REPRESENTATIONS

47. Annex B contains a brief summary of the key representations made by Mr Hussein and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Hussein, whether or not set out in Annex B.

PROCEDURAL MATTERS

48. This Notice is given under section 57 of the Act, and in accordance with section 388 of the Act.

Decision maker

49. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

50. Mr Hussein has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Hussein has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

51. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephen Robinson and Ross Murdoch at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
52. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a final notice about the implementation of this decision.

Access to evidence

53. Section 394 of the Act applies to this Notice. In accordance with section 394(1), Mr Hussein is entitled to have access to:
- i. the material upon which the Authority has relied in deciding to give Mr Hussein this Notice; and
 - ii. the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights

54. A copy of this Notice is being given to Trader-Submitter F, who is identified in it. In the opinion of the Authority the matter to which the reasons set out in this Notice relate is prejudicial to that individual. That party has similar rights of access to material, and to make a reference to the Tribunal, in relation to the matter which identifies them.

Confidentiality and publicity

55. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
56. However, the Authority must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. Mr Hussein should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority Contact

57. For more information concerning this matter generally, contact Stephen Robinson (direct line: 020 7066 1338) or Ross Murdoch (direct line: 020 7066 5396) at the Authority.

Andrew Long
Deputy Chair, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Authority's strategic objective, set out in section 1B(2) of the Act, is ensuring that the relevant markets function well. The relevant markets include the financial markets and the markets for regulated financial services (section 1F of the Act). The Authority's operational objectives are set out in section 1B(3) of the Act, and include the integrity objective: protecting and enhancing the integrity of the UK financial system.

Lack of integrity

2. The Authority has the power, pursuant to section 56 of the Act, to make a prohibition order if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. Pursuant to section 56(2) of the Act, such an order may relate to a specified function, any function falling within a specified description or any function.

FIT

3. FIT sets out the criteria for assessing a person's fitness and propriety.
4. FIT 1.1.2G states:

"The purpose of FIT is to set out and describe the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function (see generally SUP 10 on approved persons). The criteria are also relevant in assessing the continuing fitness and propriety of approved persons."

5. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity when assessing the fitness and propriety of a person to perform a particular controlled function.
6. FIT 2.1.3G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to, among other things, whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

Prohibition order

7. The Authority's approach to deciding whether to impose a prohibition order and the scope of any such prohibition order, is set out in chapter 9 of EG. The provisions of EG set out below are those which were in force during the Relevant Period.
8. EG 9.1 sets out how the Authority's power to make a prohibition order under section 56 of the Act helps it work towards achieving its regulatory objectives. The Authority may exercise this power where it considers that, to achieve any of its objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

9. EG 9.3 states:

"In deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the Authority. ... in some cases the Authority may take other enforcement action against the individual in addition to seeking a prohibition order.... The Authority will also consider whether enforcement action has been taken against the individual by other enforcement agencies or designated professional bodies."

10. EG 9.5 states:

"The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally."

11. EG 9.8 to 9.14 set out guidance on the Authority's approach to making prohibition orders against approved persons.

12. EG 9.8 states that, in deciding whether to make a prohibition order, the Authority will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

13. Specifically in relation to approved persons, EG 9.9 states that in deciding whether to make a prohibition order, the Authority will consider all the relevant circumstances of the case. These include, but are not limited to, the following:

"(2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).

...

(8) The severity of the risk which the individual poses to... confidence in the financial system."

ANNEX B

REPRESENTATIONS

1. Mr Hussein's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Hedging

2. *For his part, Mr Hussein understood the discussions which took place in the chats between 27 April 2007 and 3 March 2008, and the chat of 27 January 2009, to relate to the possibility of entering into internal hedging arrangements with UBS colleagues in relation to Trading Positions affected by LIBOR rates on the days in question. Providing an indication of his preference for, or exposure to, GBP LIBOR rates was a convenient way of indicating his hedging requirements. This was also the case in relation to the chats relied on by the Authority during the Relevant Period. Hedging, internally to a bank, of positions due to close on the same day was a common occurrence and the language used was, on analysis, consistent with Mr Hussein's position on this matter. Mr Hussein adduced a report from a market professional, who had experience in the relevant markets, in support of the existence of this practice and the interpretation of the language used, which he considered to be consistent with hedging. This professional said that it would not be unusual for hedging requests to be met only rarely.*
3. The Authority accepts that the practice of same-day hedging exists within banks. But if this was what Mr Hussein considered was being discussed during the period up to 3 March 2008 and on 27 January the following year, and if it were the ostensible reason for his own participation in the chats during the Relevant Period, the Authority considers that Mr Hussein was closing his mind during the Relevant Period to the use to which the Trader-Submitters might put the information he provided; all the more so as the Relevant Period progressed. There were in fact no internal hedges carried out by Mr Hussein with Trader-Submitters during the Relevant Period. Mr Hussein had been sufficiently concerned over the chat of 20 March 2008 (described at paragraph 25 of this Notice) to report it to a senior staff member. In reaching its conclusion on this issue, the Authority takes into account that much of the language on which it relies in the chats during the Relevant Period was similar to that used in the chat of 20 March 2008 (see for example, the chats described at paragraphs 31 to 33 of this Notice). The Authority considers that, having expressed concern over the response of Trader-Submitter F on that occasion to his expression of his preferences for LIBOR, Mr Hussein was closing his mind to the possibility that the Trader-Submitters intended to use the information for the purposes of influencing LIBOR with the aim of benefitting his Trading Positions, rather than with a view to internal hedging; the Authority considers that, as time went on without any hedging opportunities materialising, this possibility became more obvious.

Mr Hussein did not know that the people with whom he communicated were Trader-Submitters

4. *Mr Hussein did not know that, in the communications on which the Authority relies (and the earlier communications during the period up to 2 March 2008), he was communicating his preferences for the GBP LIBOR rates to Trader-Submitters. He knew that the individuals concerned were derivatives traders, like himself, and would have expected LIBOR submitters to be cash traders. This was supported by a UBS internal document dating from 7 August 2008 which described cash traders as having overall responsibility for LIBOR "fixes", although Mr Hussein did not see this at the relevant time.*
5. The Authority considers that Mr Hussein contemplated the possibility that the individuals concerned were either Trader-Submitters or in communication with them; otherwise, he would have had no reason to express the concern which he did about the chat of 20 March 2008. He must have been concerned either that that chat was with a Trader-Submitter or that its substance would be communicated to a Trader-Submitter. The communications after that date on which the Authority relies were almost all with the same individual as that chat; the one which was not was in similar terms, so Mr Hussein would not have had reason to distinguish it in this respect.

UBS senior management

6. *Over the Relevant Period UBS senior management merged the businesses of the Rates Desk and STIR. It did so when UBS's LIBOR-setting process was riddled with conflicts of interest, and knowing that the merger would exacerbate these conflicts by forcing junior traders to share their trading positions with Trader-Submitters (albeit Mr Hussein had no idea he was sharing his trading positions with Trader-Submitters). It did so as part of a deliberate programme improperly to influence the published LIBOR rate and, in so doing, to benefit the Bank's business. It did so while representing to Mr Hussein that the new system was being driven by legitimate trading interests. It deliberately kept Mr Hussein ignorant of the nefarious motivations behind the merger and used that ignorance to its advantage.*
7. The Authority accepts that the merger described above did occur, and that senior management requested that traders on the Rates Desk and STIR cooperate; the chat of 27 January 2009 was a part of this process. It has found, as reflected in the UBS Final Notice, that UBS routinely sought to manipulate LIBOR. However, the improper culture in which he operated did not mean that Mr Hussein's own conduct was not improper. As set out above, the Authority considers that Mr Hussein did contemplate that he was sharing his Trading Positions with Trader-Submitters, or with others who would pass them on to Trader-Submitters. Although Mr Hussein was relatively junior, he had sufficient experience to know that it would be improper for Trader-Submitters to seek to manipulate LIBOR for the benefit of Trading Positions, as demonstrated by his escalation to a more senior staff member of the chat of 20 March 2008 (and notwithstanding that individual's apparent unconcern, which the Authority does not consider would

have justified Mr Hussein in dismissing his own concerns in relation to subsequent communications).

Disclosure

8. *Enforcement had denied Mr Hussein access to many documents relevant to the case, on the basis that it would not be provided to the Regulatory Decisions Committee (which is the Authority's decision-maker in this matter). The test for disclosure under section 394 of the Act was not limited to materials considered by the Committee in reaching its decision: the Authority was obliged to disclose all the information it had obtained in connection with Mr Hussein's alleged misconduct. Enforcement had stated that the undisclosed documents were "generally supportive" of its case, but it was likely that Mr Hussein would take a contrary view on many of them. It was also notable that "generally supportive" was qualified: Enforcement could not be certain that a portion of the documents did not undermine its case.*
9. *Disclosure was absolutely fundamental to the fairness of the Authority's investigative process. It was closely related to, and an adoption of the tests in, the Criminal Procedure and Investigations Act 1996. The Code of Practice issued under section 23 of the 1996 Act imposed a duty on the Crown to pursue all reasonable lines of inquiry in relation to material which might be held by third parties. If it appeared that there was material that might reasonably be considered capable of undermining the prosecution case or of assisting the case for the accused the Crown must take reasonable steps to obtain it. Applying that to this case, there were various categories of information that might be obtained from UBS.*
10. The Authority has concluded that it has disclosed documents to Mr Hussein in accordance with its statutory obligations under s394 of the Act. Mr Hussein has mis-stated the test under section 394. The Authority is only obliged to disclose material obtained in connection with the matter in question in addition to material on which the Authority relies, if, in the opinion of the Authority, it undermines the decision which gave rise to the obligation to give the relevant statutory notice. The Authority is satisfied that it has disclosed all such material, together with all material passed to the Regulatory Decisions Committee. Prior to the final meeting with Mr Hussein to hear his oral representations, further disclosure was, in fact, given to Mr Hussein in relation to specific issues where the Committee considered it would be helpful.
11. The Criminal Procedure and Investigations Act 1996 (and the Code of Practice issued under it) do not apply to the Authority in respect of this matter. Where Mr Hussein seeks documents that the Authority does not possess, the issue is one of investigatory standards, for which the 1996 Act does not set out a statutory standard. The Authority accepts that it should seek relevant documentation from third parties where to do so would be proportionate and responsive to the issues in the case; it has sought a great deal of information from UBS for the purposes of Mr Hussein's case and, in the light of the fact that Mr Hussein's request is of a general nature only (that there might be something of assistance to him) does

not consider that Mr Hussein has made out a case for further documentation being sought from UBS.

Mr Hussein's case was not very serious

12. *In correspondence with his employer after he had left UBS, the Authority (with the approval of staff at a senior level) had expressed the view to that employer that Mr Hussein's case was "marginal" and "not in the same league" as some others they had reviewed, and that it was "not an undue risk" not to suspend him from his position. Although he had been dismissed from his employment after the issue of a warning notice against him by the Authority, he had successfully pursued a claim against his employer in the Employment Tribunal for unfair dismissal. That was before he had had an opportunity to challenge the case against him, and was inconsistent with the Authority's position that he lacked integrity and that a prohibition order was justified. Such an order would be disproportionate.*
13. *The Authority had discontinued a related case, which was, on the information available to Mr Hussein about it, similar to, and no less serious than, that against Mr Hussein. As emphasised by the Upper Tribunal in the case of Carrimjee (4 March 2015), like cases should be treated alike, and Mr Hussein's case should also be discontinued.*
14. In reaching the decision to impose a prohibition order on Mr Hussein, the Authority has concluded that he lacks integrity by reason of his reckless behaviour, and that this is sufficiently serious to warrant the imposition of a prohibition order, for the reasons set out in this Notice. The proceedings by Mr Hussein against his previous employer, or views expressed by staff of the Authority in the context of dialogue with that employer during the course of that investigation are not relevant to that consideration.
15. The Authority makes no comment in this Notice on the facts or merits of any other cases, related or unrelated. It is satisfied that Mr Hussein's conduct merits the prohibition order which it has decided to impose.

Mr Hussein committed no misconduct after he left UBS

16. *After Mr Hussein's subsequent employer was notified that he was under investigation by the Authority, Mr Hussein had been placed under surveillance by that employer. This had uncovered no evidence of misconduct, undermining the Authority's allegation that he lacked integrity.*
17. The Authority has concluded that the fact that Mr Hussein appears not to have committed any misconduct during his subsequent employment is not relevant to the question whether he did so during the Relevant Period. In reaching the decision to impose a prohibition on Mr Hussein, it has taken into account his subsequent behaviour, but does not consider it counterbalances his previous reckless behaviour, so as to make a prohibition order inappropriate.

Mr Hussein's comments in interview

18. *Mr Hussein explained his comments in interview, summarised at paragraph 36 of this Notice, as follows:*
- i. When he said that he would have preferred not to be a party to some of these chats, this was not because they were (or might have been) improper, but because he had been required by management to engage with colleagues in STIR, but was finding this to be of no benefit to him in carrying out his job, in particular because hedging opportunities were not materialising.*
 - ii. When he indicated he had assumed there was no problem with these communications because they were subject to supervision by the bank's Compliance team, he had meant he had not been concerned at the time because he was working in an environment which was subject to supervision by Compliance Oversight.*
19. The Authority does not accept these explanations, for the following reasons.
- i. The Authority does not accept Mr Hussein's explanation of what he meant when he said he would prefer not to have been a party to some of the chats. The Authority notes that this statement is consistent with closing his mind to the possible purpose of the communications, and not with frustration at being required by management to engage in discussions with colleagues which he regarded as time-wasting. In particular, his explanation does not properly account for his stated concern that the chats might be questioned.
 - ii. The Authority does not accept that Mr Hussein was unconcerned at the time. It considers that, regardless of the involvement of Compliance Oversight, he was uneasy about the relevant communications at the time and closed his mind to their possible implications. It considers his comments in interview were an attempt to justify his failure to react appropriately to the communications.

Interview of Trader-Submitter F

20. *The Authority had interviewed Trader-Submitter F at a late stage in these proceedings. Mr Hussein had made it clear he wished himself and/or his representatives to be present at that interview and, given his interest in what that individual might have to say, this ought to have been permitted.*
21. The Authority provided Mr Hussein with a transcript of its interview with Trader-Submitter F. The interview did not provide the Authority with any useful information and the Authority does not rely on it.